International Convention for the Protection of All Persons from Enforced Disappearance

Distr.: General
18 April 2017
English
Original: French

Committee on Enforced Disappearances

Concluding observations on the report submitted by Senegal under article 29 (1) of the Convention*

1. The Committee on Enforced Disappearances examined the report submitted by Senegal under article 29 (1) of the Convention (CED/C/SEN/1) at its 201st and 202nd meetings (CED/C/SR.201 and 202), held on 7 and 8 March 2017. It adopted the following concluding observations at its 212th meeting, held on 15 March 2017.

A. Introduction

2. The Committee welcomes the report submitted by Senegal under article 29 (1) of the Convention and the information contained therein. The Committee appreciates the constructive dialogue it had with the delegation of the State party on the measures taken to implement the provisions of the Convention. The Committee also thanks the State party for its written replies (CED/C/SEN/Q/1/Add.1) to the list of issues (CED/C/SEN/Q/1) and for the oral statements made by the delegation.

B. Positive aspects

3. The Committee commends the State party for having ratified almost all the United Nations core human rights instruments and the Rome Statute of the International Criminal Court.

4. The Committee notes with appreciation the legislative and institutional measures adopted by the State party in areas relevant to the Convention, including:

(a) The adoption by the National Assembly on 28 October 2016 of a bill amending Act No. 65-61 of 21 July 1965 on the Code of Criminal Procedure, which, among other reforms, provides for a person's right to have a lawyer from the outset of police custody;

(b) The establishment, under Act No. 2009-13 of 2 March 2009, of the National Observatory of Places of Deprivation of Liberty as a national mechanism for the prevention of torture.

5. The Committee also takes note of the establishment of the Extraordinary African Chambers within the Senegalese judicial system to try Mr. Hissène Habré.

* Adopted by the Committee at its twelfth session (6-17 March 2017).

C. Principal subjects of concern and recommendations

6. The Committee considers that, at the time of the drafting of the present concluding observations, the legislation in force in the State party did not fully comply with the obligations undertaken by States that have ratified the Convention. While welcoming the fact that the State party has embarked on a legislative process designed to implement the Convention in full, the Committee recommends that the State party take account of the recommendations contained in these concluding observations. These recommendations have been made in a constructive and cooperative spirit, with a view to strengthening as soon as possible the State party's legislation and the manner of its application by the authorities in order to ensure that the rights and obligations set out in the Convention are fully observed.

General information

Competence of the Committee under articles 31 and 32 of the Convention

7. The Committee notes that the State party has not yet made the declarations envisaged under articles 31 and 32 to enable the full implementation of the Convention (arts. 31 and 32).

8. **The Committee invites the State party to recognize without delay the Committee's competence under articles 31 and 32 of the Convention, with a view to strengthening the framework for protection against enforced disappearances that is provided for in the Convention.**

National human rights institution

9. The Committee notes that in 2012 the Senegalese Human Rights Committee lost its "A" status under the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). The Committee takes note of the information provided by the State party to the effect that it was considering the adoption of a law establishing a Senegalese national human rights commission in order to comply with the Paris Principles (art. 2).

10. **The Committee encourages the State party to continue its efforts to establish a national human rights institution in conformity with the Paris Principles and to allocate sufficient financial and human resources for its functioning. It invites the State party to include explicitly in its mandate the issue of enforced disappearances.**

Definition and characterization of enforced disappearance as an offence (arts. 1-7)

Non-derogability of the prohibition of enforced disappearance

11. The Committee notes the State party's expressed intention to incorporate the non-derogability of the prohibition of enforced disappearance into its draft reform of the Criminal Code (art. 1).

12. **The Committee recommends that the State party take the necessary steps to provide specifically, as required by article 1 (2) of the Convention, that no exceptional circumstances whatsoever may be invoked for the non-derogability of the prohibition of enforced disappearance.**

Incorporation of the definition and characterization of enforced disappearance as an offence in the Criminal Code

13. The Committee notes with interest that the State party has begun a legislative process aimed at revising the Criminal Code and the Code of Criminal Procedure with a view to putting into effect all the provisions of the Convention. The Committee notes with appreciation that draft article 153 of the new Criminal Code uses the definition of enforced

disappearance contained in article 2 of the Convention and characterizes enforced disappearance as an autonomous offence that is subject to punishment (arts. 2, 4, 6 and 7).

14. **The Committee recommends that the State party expedite the process of revising the Criminal Code to give effect to the Convention with a view to defining and characterizing enforced disappearance as an autonomous offence, in line with the definition contained in article 2 of the Convention, that is subject to appropriate penalties that take into account the extremely serious nature of the offence.**

Non-State entities

15. The Committee notes that there is some uncertainty in Senegalese law concerning the application of the Convention to the actions of non-State entities and the consequences of such actions for victims' rights (art. 3).

16. **The Committee encourages the State party to incorporate into its domestic law the measures set out in article 3 of the Convention relating to the acts defined in article 2 of the Convention committed by groups of persons without the authorization, support or acquiescence of State officials.**

Characterization of enforced disappearance as a crime against humanity

17. The Committee notes that, under article 431-2 of the Senegalese Criminal Code, "subjection to slavery or the mass and systematic practice of summary executions, abduction and disappearance" constitutes a crime against humanity. However, the Committee notes with concern that this provision fails to define enforced disappearance and does not mention the consequences of the widespread or systematic practice of enforced disappearance, as required by article 5 of the Convention. In particular, the wording of article 431-2 wrongly suggests that enforced disappearance constitutes a crime against humanity only if preceded by abduction (art. 5).

18. **The Committee recommends that the State party amend its criminal legislation on enforced disappearance as a crime against humanity, especially article 431-2 (1) (6) of the Criminal Code, in order to ensure that it complies with article 5 of the Convention. In particular, the Committee recommends that enforced disappearance be mentioned separately from subjection to slavery and abduction and that article 431-2 expressly state that an act of enforced disappearance constitutes a crime against humanity.**

Criminal responsibility of superiors

19. The Committee notes that the reform of the Senegalese Criminal Code aims to incorporate the provisions of article 6 of the Convention on the responsibility of a superior and the prohibition against invoking any order or instruction to justify an enforced disappearance, contrary to the law as it currently stands (arts. 1, 2, 4, 6 and 7).

20. **The Committee recommends that the State party ensure that the new text of the Criminal Code complies fully with the Convention by providing for the responsibility of a superior within the meaning of article 6 (2).**

Mitigating and aggravating circumstances

21. The Committee notes that the State party intends, in the new Criminal Code, to reference article 7 of the Convention in establishing the mitigating and aggravating circumstances applicable to enforced disappearances (art. 7).

22. **The Committee encourages the State party to provide for mitigating and aggravating circumstances applicable to acts of enforced disappearance covering all the elements listed in article 7 (2) of the Convention. It also encourages the State party to ensure that mitigating circumstances in no way obviate the imposition of the appropriate punishment.**

Criminal responsibility and judicial cooperation with regard to enforced disappearance (arts. 8-15)

Continuous nature of the offence of enforced disappearance and the statute of limitations

23. The Committee notes that, according to the State party, there is no statute of limitations on crimes against humanity in domestic law. The Committee regrets, however, the State party's assertion that it does not consider it necessary to refer specifically in the new definition to the continuous nature of an act of enforced disappearance. The Committee would like to emphasize that it is important to expressly recognize the continuous nature of enforced disappearance and notes with interest the statements by the delegation to the effect that the State party is prepared to give the matter further consideration (art. 8).

24. **The Committee recommends that the State party ensure that the new Criminal Code includes the necessary provisions to recognize specifically the continuous nature of the offence of enforced disappearance and that the term of limitations for criminal proceedings reflects the extremely serious nature of the offence of enforced disappearance and starts to run only when the violation ceases.**

Extraterritorial jurisdiction in cases of enforced disappearance

25. The Committee takes due note of the system of extraterritorial jurisdiction provided for under article 669 of the Code of Criminal Procedure in cases of enforced disappearance constituting a crime against humanity and notes with interest that the State party is considering the adoption of a specific provision applying to all other cases of enforced disappearance, in accordance with article 11 of the Convention (arts. 9 and 11).

26. **The Committee recommends that the State party adopt the necessary measures to guarantee the exercise of jurisdiction by the courts over offences of enforced disappearance, in accordance with the obligations arising from article 9 of the Convention, in particular the principle of *aut dedere aut judicare* set out therein, and from article 11 of the Convention.**

Investigations of cases of enforced disappearance

27. The Committee notes with concern that, according to the information provided by the State party, the domestic authorities, when investigating cases of disappearance, use investigation procedures set out in the Code of Criminal Procedure relating to such acts as abduction and false imprisonment. The Committee considers that the information given does not, in itself, meet the obligations arising out of article 12 of the Convention (art. 12).

28. **The State party should take measures to ensure that, where there are reasonable grounds for believing that a person has been the victim of an enforced disappearance, a thorough and impartial investigation is conducted without delay, even if there has been no formal complaint, and that the perpetrators are prosecuted and, if found guilty, are punished commensurately with the serious nature of their acts. To that end, the State party should:**

(a) **Guarantee that, where there are reasons to believe that an offence of enforced disappearance has been committed, effective investigations are conducted without delay into any State officials or agencies that might have been involved, and all lines of enquiry are exhausted;**

(b) **Ensure that the Code of Criminal Procedure allows victims of enforced disappearance to participate actively and without restrictions in the relevant judicial proceedings;**

(c) **Consider training some officers of the criminal investigation service and court officials specifically to investigate, where necessary, alleged cases of enforced disappearance and to conduct criminal prosecutions in cases of this kind;**

(d) **Guarantee effective coordination and cooperation between all agencies involved in the investigation and ensure that they have sufficient facilities and the technical, expert, financial and human resources to perform their functions expeditiously and effectively;**

(e) **Take all the necessary measures, in accordance with article 12 (4) of the Convention, to ensure that persons suspected of having committed an offence of enforced disappearance, or officials belonging to their units, are not in a position to participate in an investigation or to influence, either directly or indirectly, on their own or through an intermediary, the progress of the investigation.**

Protection of complainants, witnesses, relatives of a disappeared person and their defence counsel and persons participating in the investigation

29. The Committee takes note of the information provided by the State party that the protection of complainants and witnesses is provided for by the Criminal Code. The Committee observes, first, that the provisions of the Code are very general and, secondly, that they are neither sufficient nor sufficiently explicit to afford protection to all the categories of persons referred to in article 12 (1) of the Convention and therefore fail to meet the requirements of this article (art. 12).

30. **The Committee recommends that the State party, as part of the reform of its Criminal Code, take the necessary measures to effectively protect all the categories of persons listed in article 12 (1) of the Convention from any ill-treatment or intimidation as a consequence of the complaint or any evidence given.**

Measures to prevent enforced disappearances (arts. 16-23)

Non-refoulement

31. While taking note of the delegation's assertions that it is possible to appeal with suspensive effect against an expulsion decision before the Administrative Division of the Supreme Court, the Committee considers inadequate the information provided by the State party concerning the measures and criteria employed to evaluate the risks of enforced disappearance and other threats to life or physical integrity in cases of refoulement, expulsion, return to the border or extradition. On the other hand, the Committee notes with interest the intention expressed by the State party to include in the reformed Criminal Code an explicit prohibition against the expulsion, return, surrender or extradition of a person where there are substantial grounds for believing that he or she would be in danger of being subjected to enforced disappearance (art. 16).

32. **The Committee recommends that the State party ensure that the principle of non-refoulement enshrined in article 16 (1) of the Convention is strictly observed in all circumstances.**

Register of persons deprived of liberty

33. The Committee takes note of the information provided by the State party and the statements by the delegation on the obligation under domestic law to record all cases of deprivation of liberty in official registers containing the details mentioned in article 17 (3) of the Convention. The Committee regrets, however, the lack of detailed information regarding the relevant legal provisions in that regard and further notes that the details contained in prison registers do not fully meet the criteria required under article 17 (3) of the Convention. Lastly, the Committee notes that Senegalese law does not provide for judicial remedies for persons seeking to obtain the information referred to in article 18 (1) of the Convention (arts. 17, 18 and 22).

34. **The Committee recommends that the State party take the necessary measures to ensure that:**

(a) **All registers or records of persons deprived of their liberty are accurately and promptly completed and updated in such a way as to contain all the information required under article 17 (3) of the Convention;**

(b) **Records are regularly subject to verification and, in the event that registers are not correctly completed and updated, the officials responsible are duly sanctioned, including through criminal proceedings, in accordance with the relevant legislation;**

(c) **All persons deprived of liberty, irrespective of the offence of which they are accused, are afforded, from the outset of their deprivation of liberty, all the fundamental legal safeguards provided for under article 17 of the Convention;**

(d) **Any person with a legitimate interest can have prompt and easy access to at least the information listed in article 18 (1) of the Convention, including during the period of police custody, and the right of recourse where a request for access has been denied.**

Human rights training, particularly on the provisions of the Convention

35. The Committee takes note of the information concerning training in human rights and standards governing the deprivation of liberty given to members of the police and the prison service. The Committee notes, however, that such training does not specifically cover the Convention (art. 23).

36. **The Committee encourages the State party to ensure that the training given to military and civilian law-enforcement personnel, medical personnel, public officials and other persons who may be involved in the custody or treatment of any person deprived of liberty, including judges, prosecutors and other judicial officials at all levels, incorporates training on the Convention, in accordance with article 23.**

Measures to provide reparation and to protect children against enforced disappearance (arts. 24 and 25)

Definition of victim and the right to receive reparation

37. The Committee considers that the definition of a victim set out in article 2 of the Code of Criminal Procedure is not in conformity with that set out in article 24 (1) of the Convention. Moreover, the Committee regrets that domestic law does not expressly provide for all the forms of reparation enshrined in article 24 (5) of the Convention for persons who have suffered harm as the direct result of an enforced disappearance (art. 24).

38. **The Committee recommends that the State party take the measures necessary to ensure that domestic law contains:**

(a) **A definition of a victim in line with that contained in article 24 (1) of the Convention;**

(b) **A comprehensive system of reparation and compensation that is fully in line with article 24 (4) and (5) of the Convention and other relevant international standards.**

Legal situation of disappeared persons and that of their relatives

39. While noting the information provided by the State party in paragraphs 345-356 of its report and the statements by the delegation on the assistance afforded to victims as part of the social welfare system, the Committee considers it insufficiently clear what the legal situation of the relatives of a disappeared person is and what rights they have as regards financial matters, social protection, family law and property rights (art. 24).

40. **The Committee recommends that the State party address appropriately the legal situation of disappeared persons and that of their relatives in areas such as social care, financial matters, family law and property rights.**

Legislation on child protection

41. The Committee notes with concern the absence of measures under domestic law to implement article 25 of the Convention and in particular to prevent and punish under Senegalese criminal law the abduction of children and the falsification, concealment or destruction of documents attesting to the true identity of the children referred to in article 25 (1) (a).

42. **The Committee recommends that the State party strengthen its criminal legislation with a view to incorporating as specific offences the acts described in article 25 (1) of the Convention and provide for appropriate penalties that take into account the extremely serious nature of the offences.**

D. Dissemination and follow-up

43. The Committee wishes to recall the obligations undertaken by States when ratifying the Convention and, in this connection, urges the State party to ensure that all the measures it adopts, irrespective of their nature or the authority from which they emanate, are in full accordance with the obligations it assumed when ratifying the Convention and other relevant international instruments. In this regard, the Committee particularly urges the State party to ensure the effective investigation of all enforced disappearances and the full satisfaction of the rights of victims as set forth in the Convention.

44. The Committee wishes to emphasize the particularly cruel effect of enforced disappearances on the rights of women and children. Women who are victims of enforced disappearance are particularly vulnerable to sexual and other forms of gender violence. Women who are relatives of a disappeared person are particularly likely to suffer serious social and economic consequences and to be subjected to violence, persecution and reprisals as a result of their efforts to locate their loved ones. Children who are victims of enforced disappearance, either because they themselves were subjected to disappearance or because they suffer the consequences of the disappearance of their relatives, are especially vulnerable to numerous human rights violations, including identity substitution. In this context, the Committee places special emphasis on the need to ensure that gender perspectives and child-sensitive approaches are used in implementing the rights and obligations set out in the Convention.

45. The State party is encouraged to disseminate widely the Convention, its report under article 29 (1) of the Convention, the written replies to the list of issues drawn up by the Committee and the present concluding observations, in order to raise awareness among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the State party and the general public. The Committee also encourages the State party to promote the participation of civil society in the actions taken in line with the present concluding observations.

46. In accordance with the Committee's rules of procedure, by 17 March 2018 at the latest, the State party should provide relevant information on its implementation of the Committee's recommendations, as contained in paragraphs 14, 18 and 34.

47. Under article 29 (4) of the Convention, the Committee requests the State party to submit, no later than 17 March 2023, specific and updated information on the implementation of all its recommendations and any other new information on the fulfilment of the obligations contained in the Convention, in a document prepared in accordance with paragraph 39 of the guidelines on the form and content of reports under article 29 to be submitted by States parties to the Convention (CED/C/2). The Committee encourages the State party to promote and facilitate the participation of civil society, including victims' organizations, in the preparation of this information.